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File No. O-Pensions/42

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Subject:—

Opinions under Pensions

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C O N T E N T S .

Legal Department File O. Pensions/42.

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The cash allowance of Rs. 1-14-0 is shown in the Taluka Form XIII as contingency. That means that the cash allowance is for meeting incidental expenses such as stationery etc. The class of the allowance is shown as "आचरे " This appears to be a mistake. 'Achare' is the nae of a village in Malvan Taluka and the allowance appears to have b en given for m eting incidental expenses in respect of that village. Remark 'G' at p. 8 of Appendix A of Joglekar's Alienation Manual is as follows:-

" Payment of Idiana and allowances of a mxt similar character for villages games etc. to be at once permanently stopped, excepting in the few instances in which they have been declared continuable."

This remark is based on para. 1 of Government Resolution, Revenue Department No. 1719, dated 24th April 1865 and Government Resolution, Revenue Department No. 4040, dated the 27th September 1865. 'Idiana' means all miscellaneous expenses spent on various occasions such as sports, holidays, arrival of guests etc. It is very doubtful whether the contingent cash allowance can be called Idiana or an allowance of a similar character. However miscellaneous allowances were directed to be stopped by Government Resolution Revenue Department No. 1719 dated 24th April 1865. But from Government Resolution, Revenue Department No. 4040, dated 27th September 1865 it will be seen that under formal decision by Competent authority, certain Idiana allowances were declared continuable and it was directed in that Government Resolution that Government approved of Major Etheridge's instructions to the Collector of Dharwar to continue such items according to the term of decision. The contingent allowance in this case relates to the district of Ratnagiri and not Dharwar. No authority for payment of this allowance to the Jahagirdar is forthcoming, nor has the claimant Jahagirdar cared to produce any authority in support of his right to the allowance; but the fact that Government has been paying the

allowance to the Jahagirdar for nearly three-quarters of a century would in itself raise a presumption in favour of his right to the allowance. It is true that if the allowance is discontinued the Jahagirdar may not be able to sue Government in a civil court for payment, as no such suit can be entertained by a civil court without a certificate from the Collector (see section 4, and 6 of the Pensions Act, 1871). The amount involved is very trifling. In the circumstances it is for the administrative department to decide whether, after having continued the allowance for so many years, Government shoud suddenly discontinue it merely on the ground that no authority for payment is traceable.

sd/- P.N.M.
30/6

Remembrancer of Legal Affairs.

R.R.to R.D. No. 5365 dated the 1st July 1942.

MRR.
30/4.

Office of the R.L.A.

It appears that certain Devasthan lands were acquired for Hubli Water Works. The compensation amount awarded was credited to Government and a cash allowance at the rate of 4%,c, was sanctioned by Government ~~xxx xxxxxx~~ under G.O. (R.D.) No. 1851 dated the 6th March 1905. The Amount so calculated and entered in the Pots Khata as Devasthan allowance i.c. Rs. 47-4-7 is payable ~~xx~~ to Shri Malneshwar Devasthan Wahivatdars (1) Naggappa bin Basappa and (2) Parawa Bom Fakirappa. The collector of Dharwar has raised the question as to whether this Devasthan cash allowance is governed by the ~~Bombay~~ Pensions Act, 1871, and the rules made thereunder In his endorsement dated the 2nd September, 1942 at p-3 ante the Commissioner observes; "In his opinion No. B-51 dated the 28th January 1901 printed as an accompaniment to Government Resolutionx No. 1623 dated the 7th March 1901 the ~~R~~.L.A. has held that the allowances due under compensation bonds are not subject to the ~~Bom~~ Pensions Act the rules thereunder as they are ~~continuable under a contract~~ continuable under a contract. The allowances which are sanctioned as compensation for custom, salt, opium and excise rights are continuable under a contract though bonds may have been issued. Similarly the allowances sanctioned in lieu of interest on the sum awarded for the acquisition of Devasthan, Joshi Vazi etc. Inam lands can be said to have been continued under a contract. These allowances ought therefore to be exempt from the operation of the pensions Act and the rules thereunder." The R.L.A. is requested to offer his remarks on the proposal of the Commissioner.

2. As observed by the Hon'ble Mr. Colloral in introducing the Pension Bill the leading principles of the main provisions of the law were that as the bestowal of pensions or similar allowance was an act of grace or state policy on the part of the ruling power, the Government reserved to itself the determination of all questions affecting the grant or continuance of these allowances and the cognizance of claims relating thereto by courts of judicature was, as between

the granter and grantee, absolutely barred (see Dandekar' Land Land Tenures Vo. I p. 475) The general purpose of the pensions Act, 1871, Appears to be to keep the distribution of what is regarded as a bounty of Government wholly in the hands of its executive officers (see Bahaji vs.Rajaram Ballal I.L.R. 1 Bom. 75 at p.80). As stated in its preamble the Pensions Act relates to pensions Act and grants by Government of Money or landrevenue "Grant of money or land revenue" as defined in section 3 includes anything payable on the part of Government in respect of any right, privileg, perquisite or office. "Right" means "hak" (see I. L.R. 1 Bom. 203 at p. 207). The orgignal grant of a Devasthan Inam land being gratuitous, the interest payable on the compensation amount credited to Government Treasury on the acquisition of the said Inam land under the Land Acquisition Act would partake of the ~~raging~~ origin nature of the grant namely that of a bounty Government and Consequently it would be grant of money or land revenue within the meaning of section 3 of the Pensions Act. Such allowances would therefore be governed by the Pensions Act and therul s thereunder and h ve been rightly entered inthe Peta Khata(see pp. 276 and 280 of the Manual of Revenue Accounts)

3. The exact nature of the compensation bonds considered by the R.L.A. in his opinion No.B.51 dated the 28th January 1901 is not known. It appears from the letter of 1833 from the Territotial Department underlying G.R.No.1858 dated the 22nd September 1953 that Government had no power to alter the compensation Bonds without the consent of holders as they constituted, binding engagement furthermor those bonds did not provide for power of Government to make them subject to such a rule as was introduced with reference to warshasans and charitable allowances. It is therefore clear that the compensation bonds then in queation were in the nature of agreements as opined by the R.L.A.in 1901; and as allagreements require consideration they could not be deemed tobe in the nature of a bounty of state. ~~Consequently~~ Consequently they would would not be government by the Pensions Act and the Pensions Rules.

It follows therefore

that the compensation bonds are distinguishable from Devasthan cash allowances granted in lieu of interest on compensation payable on acquisition of Devasthan lands. The view taken by the Commissioner does not appear to be correct.

sd/- P.N.M.
21/12

Remembrancer of Legal Affairs.

U.R.to R.D. No. 10159 dated the 21st December 1942.

MRR.
30/4.

DTP
2-5-42

Encl
2/5.